THE HON'BLE MR JUSTICE K.C. BHANU

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WRIT PETITION NO : 18413 of 2003

24-08-2005

Between:

S.K.Qursheed s/o Late S.K.Mohinuddin
R/o 6-4-10., Lalsaheb Gadda., Sangareddy., Medak District.
E.No.61461.

..... PETITIONER

AND

1 APSRTC., rep.by its Managing Director.
Musheerabad, Hyderabad. And others.

.....RESPONDENTS

THE HON'BLE MR JUSTICE K.C. BHANU

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O R D E R:

The writ petitioner was appointed as Driver in the respondents-Corporation on 06-07-1973 and was posted to the 2nd respondent depot. He completed 18 years of service in the respondents-corporation. It is stated that the 2nd respondent gave a report stating that the writ petitioner has unauthorisedly absented for duty from 20-12-1998 to
22-12-1998. Apart from that, it is also reported that the writ petitioner has absent for duty for 36 days in addition to availing 23 leaves by reporting sick for 11 days during the period from January 1998 to December, 1998 which comes to misconduct. Accordingly, a charge sheet dated 23-12-1998 has been issued to the writ petitioner. However, in a domestic enquiry conducted by the 2nd respondent it was held that the charges framed against the writ petitioner are proved. Consequently, the writ petitioner was removed from service vide proceedings No.c1/1(6#)/98-GM SRG, dated 27-03-1999. Questioning the same, the writ petitioner raised an Industrial Dispute before the 3rd respondent in I.D.No.36 of 2000 wherein the 3rd respondent while partly allowing the claim directed the respondents-corporation to reinstate the

petitioner into service as a fresh driver without back wages and attendant benefits. Aggrieved by the same, the present writ petition has been filed.

Heard both sides.

Learned counsel for the writ petitioner contended that the punishment imposed is grossly disproportionate to the alleged misconduct and that the enquiry officer ought to have given one more opportunity to the petitioner by issuing a notice. It is also contended that the Tribunal ought to have considered the medical certificate and the gravity of misconduct of the petitioner. Therefore, prays to allow the writ petition.

On the other hand, the learned Standing Counsel for the respondents-corporation contended that the punishment imposed is proportionate to the alleged misconduct and that the order of the Tribunal does not suffer from any illegality or infirmities calling interference by this Court.

I have perused the order impugned.

It is the case of the petitioner that without issuing notice, the respondents-corporation made ex-parte enquiry and submitted a report holding the charges proved against him and consequently removed him from service. Therefore, the respondents violated the principles of natural justice.

On a perusal of the order impugned, the Tribunal categorically stated that a notice of enquiry was issued to the writ petitioner by the enquiry officer on 24-02-1999 and the same was received by him as evident from the postal acknowledgement. On the date of enquiry, the petitioner remained absent and therefore an ex-parte enquiry was conducted and examined the witnesses. It is clear that since the writ petitioner was absent even acknowledging the notice, the enquiry officer has no option except to conduct ex-parte enquiry by examining the witnesses. Having regard to the categorical findings recorded by the Tribunal, the question of violation of natural justice does not arise and that the charges held against the petitioner have been proved beyond preponderance or probabilities.

Coming to the aspect of the matter that the writ petitioner is unauthorisedly absenting duties on a number of occasions, it is evident from the service record of

the petitioner that on 04-04-1976 the annual increment of the petitioner was withheld for three months and thereafter on 19-06-1989 the petitioner was directed to approach the Divisional Manager Medak for his irregular attendance to his duties and thereafter he was transferred to Zaheerabad Depot. It is further to state that the annual increment of the petit6ioner was deferred for two years without cumulative effect. Evidently, on 24-06-1993, the petitioner was removed from service and on appeal, he was reinstated into service as fresh driver with effect from 05-01-1994. There are also incidents where the petitioner was removed from service and on appeal he was instated into service by reducing his pay with a minimum at driver's pay besides directing the period of his absence from the date of removal from a reported to duty as not on duty. From all the above it is clear that the petitioner is unauthorisedly absented from duty on several occasions and therefore, he is a habitual absentee. Though, the petitioner faced number of punishments, in spite of the same, he did not mend himself.

The writ petitioner being a Driver has to maintain high standards. But the petitioner, without informing the authorities absenting for the duty, which will not only cause loss to the corporation but also cause loss of the general public, is a grave misconduct on his part. However, since the charge relates to absentation for three days, the Tribunal took a lenient view in ordering reinstatement as a free Driver.

Having regard to the facts and circumstances of the case and in view of the fact that the Tribunal has given the categorical findings and has taken a lenient view with regard to the quantum of punishment I do not see any grounds to interfere with the award impugned.

Accordingly, the writ petition is dismissed. No costs.

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24-08-2005

MjI/*